Equality and Human Rights Commission

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# Minutes of the 115th meeting of the Board of the EHRC

**23 November 2023 (09:30 to 13:30)**
**9th floor, Windsor House, 50 Victoria Street, London SW1H 0TL**

## Attending

### Commissioners

Kishwer Falkner (Chairwoman), Lesley Sawers (Interim Deputy Chair), Jess Butcher, Joanne Cash, David Goodhart (V) (items 1 to 6), Kunle Olulode, Akua Reindorf

### Board Attendees

Martyn Jones, Acting Chair of Wales Committee (V)

### Officers

Cath Denholm, Acting Chief Executive
John Kirkpatrick, Deputy Chief Executive
Moya Alcock, Director of Communications
Cihan Altan, Chief of Staff
Bill Malloy, Director of Finance, Governance and Planning
Victoria Mearns, Corporate Governance
Amanda Topham, Head of Corporate Law and Information Governance
Will Taylor, Head of Strategy (item 11)
Anna Boaden, Director of Policy, Human Rights Monitoring and Three Nations Working (items 11 and 12)
Adam Sowerbutts, Director of Legal – Litigation and Enforcement (item 12)
Gill Martin, Enforcement Principal (item 12)
Martin Crick, Acting Director of Regulation (item 13)
Sam Cook, Compliance Senior Principal (item 13)
Beverley Reid, Head of Business Improvement (item 14)

### Guests

Helen Anderson, Government Equality Hub

### Observers

Lesley Thomson, Scotland Committee Member (V)

## 1. Chairwoman's welcome and apologies

1.1 The Chairwoman welcomed attendees to the meeting, extending a special welcome to Lesley Thomson, Scotland Committee member, who was attending as an observer, and Martyn Jones, Acting Chair of the Wales Committee.

1.2 Apologies for absence were received from Alasdair Henderson and David Goodhart from item 7 onwards.

## 2. Declarations of interest

2.1 The Scotland Commissioner declared her ongoing interest as the Director of GenAnalytics, which has this year received grant funding from the Scottish Government to deliver a one-day conference on ageing on behalf of the Older Persons Strategic Forum. She confirmed this conference will be held on 17 January.

2.2 Akua Reindorf declared an interest with regards to the CEO report in the Race Legal Support Fund case involving the British Transport Police, advising that she would recuse herself if there was any discussion on this point.

2.3 The Chair of the Audit and Risk Assurance Committee (ARAC) declared an interest in relation to the paper on tackling discrimination, harassment and victimisation within uniformed services, as he has previously worked with the Black and Ethnic Minority caucus of the Fire Brigade Union.

2.4 The Acting Wales Committee Chair also declared an interest in relation to tackling discrimination, harassment and victimisation within uniformed services through his role as the Equality, Diversity and Inclusion Manager at South Wales Police.

## 3. Minutes of the 114th Board Meeting

3.1 The Board approved the minutes of the meeting of 17 October as an accurate record subject to a minor amendment to paragraph 5.2.

## 4. Actions Arising

4.1 The Board noted the action log.

4.2 Commissioners suggested several minor amendments to specific actions.

4.3 Subject to those amendments, the Chairwoman advised she is content that everything on the action log is in hand and will be covered at this or future meetings and that the actions proposed for completion will be complete by the end of this meeting.

## 5. Committee and Commissioner Working Group updates

5.1 The ARAC Chair advised that ARAC met informally on 10 November to discuss budgetary pressures and the Rebuilding our Commission programme. He advised that the next formal meeting will be held on 5 December, and this meeting will include a private session with ARAC members and the EHRC Chairwoman.

5.2 The Chair of the People and Workspace Committee (P&WC) thanked the Scotland Commissioner for agreeing to temporarily join P&WC, and thanked Jess Butcher for agreeing to become a member. She advised that P&WC similarly met informally on 13 November to discuss budgetary pressures and the Rebuilding our Commission programme. The next formal P&WC meeting will be held on 11 December.

5.3 In the absence of the Chair of the Statutory Report Commissioner Working Group (CWG), the Corporate Governance team will provide Commissioners with this update via correspondence. The Chairwoman expressed concerns that a few recommendations made in the Equality and Human Rights Monitor, published 16 June, had not received final approval from the Board. Commissioners strongly agreed that the Board must have final approval of all such recommendations. The Acting Chief Executive advised that she would commission a rapid review of how this occurred and update the Board as soon as possible on any actions to be taken.

**Action: Acting Chief Executive to commission a rapid review of the process for approval of recommendations made in the Equality and Human Rights Monitor.**

5.4 In the absence of the Chair of the Human Rights Monitoring (HRM) CWG, the Corporate Governance team will provide Commissioners with this update via correspondence. The Chairwoman advised that she attended a meeting with the representatives of the European Commission on Racism and Intolerance 16 November.

5.5 The Scotland Commissioner advised that the Scotland Committee met for an induction and development day on 9 November, noting its success. She advised that the Executive Director and two Commissioners from the Scottish Human Rights Commission (SHRC) provided a presentation at the meeting, and that the Scotland Committee and SHRC agreed to work together to deliver human rights in Scotland. The Scotland Commissioner advised that the next formal meeting will be held on 12 December.

5.6 The Acting Wales Committee Chair advised that the Wales Committee met for a development session on 1 November to commence work on a Committee effectiveness review and continue their review of stakeholder engagement in Wales. He advised that the next formal meeting will be held on 7 December. The Acting Wales Committee Chair advised that both himself and the Head of Wales met with recruitment agency Nurole to recruit new Wales Committee members. He advised that there will be a stakeholder engagement event at the Senedd on 6 December to showcase 'Is Wales Fairer?'

## 6. CEO Report and Chairwoman's update

6.1 The Board noted the CEO Report.

6.2 The Board confirmed its approval earlier in the meeting of the appointment of Martyn Jones as the Acting Chair of the Wales Committee and his co-opting on to the Board in this capacity until the end of his term on 31 May 2024 or until a permanent Wales Commissioner is appointed, whichever is sooner.

6.3 The Board approved the appointment of Jess Butcher as a member of P&WC.

6.4 The Board confirmed its approval earlier in the meeting to co-opt Lesley Sawers to P&WC for a period of time.

6.5 The Board approved a resolution in writing of 15 November to revoke, until further notice, the delegation of performance, conduct and discipline of the Leadership Team, pertaining to section 3.16.c).i of the Governance Manual, in pursuance of organisational performance and improvement. The CEO retains delegated authority for the overall organisation, management, staffing and procedures in financial and other matters as well those retained delegations in the Scheme of Delegation detailed in Annex B of the Governance Manual.

6.6 The Chairwoman asked about the memorandum of understanding between the EHRC and SHRC and when it was last reviewed. The Scotland Commissioner advised that this was discussed at the 9 November Scotland Committee meeting, and that the SHRC are similarly motivated to review this.

6.7 The Chairwoman, noting that two Commissioners have resigned this year, took the opportunity to remind Commissioners of the proper resignation process. A letter must be submitted to the Minister for Women and Equalities notifying them of the resignation, upon which a three month notice period normally commences. Unless and until the Minister accepts immediate termination in writing, the Commissioner must carry on fulfilling their obligations until they receive confirmation or their notice period is ended. Commissioners should not copy their communication to external or internal parties and the Governance Manual will be updated to clarify these obligations. If there is any doubt, Commissioners should contact the CEO or Chair to clarify the position.

6.8 Commissioners queried the reported complaint that our website is not compliant with the EA/HRA. The Director of Communications advised that our website has always been compliant, however in light of a complaint about the “Contact us” page of the website, the page had been overhauled to improve it.

6.9 Commissioners enquired if the Government Equalities Office (GEO) had been consulted on the update of our Code of Practice for Services, Public Functions and Associations. The Deputy Chief Executive advised that the GEO will be engaged before an update is brought to the Board.

6.10 The Chairwoman praised the communications update, highlighting the increase in positive media coverage as particularly encouraging.

6.11 Commissioners raised concerns about the approach to promoting awareness days, advising that the risks and opportunities must be considered before the Commission promotes specific days on social media. The Director of Communications advised that the current approach is being reconsidered. The Chairwoman requested that the 2024 social media communications plan be sent to the Board for approval by correspondence.

**Action: 2024 social media communications plan to be circulated to the Board for a decision by correspondence.**

## 7. Budget Update

7.1 The Director of Finance, Planning and Governance introduced the paper, noting that it presents the position following the mid-year financial review of the Commission and where it was proposed savings could be made.

7.2 The ARAC Chair advised that the position of the ARAC was that it was not practicable to modify the proposed staff pay increase and that the full amount should be delivered. This was echoed by the P&WC Chair.

7.3 There was discussion on the affordability of the 2023/24 consolidated pay offer. The Acting Chief Executive advised that the pay remit agreed with Cabinet Office constrains us from offering the pay rise on a non-consolidated basis.

7.4 The Acting Chief Executive suggested a joint briefing session on the pay remit rules and regulations for ARAC and P&WC members, which Commissioners welcomed.

**Action: Governance team to arrange a joint pay remit briefing session between ARAC and P&WC.**

## 8. Governance Review and Reset Programme

8.1 The Board approved the proposal to engage an external expert to lead a governance review, noting the proposed timeline of 4 – 6 weeks of engagement, depending on whether the work was on a full time or part time basis.

8.2 The Board agreed that the review should be led by the Board, and whilst detailed actions within will be delegated to ARAC, P&WC and the Executive, the Board will maintain overall control of the exercise.

8.3 The Board agreed that P&WC will continue its governance overview of the building our commission programme.

8.4 The Board requested that, once complete, the terms of reference for the governance review be shared for approval by correspondence.

**Action: Terms of Reference of governance review to be circulated to the Board for a decision by correspondence.**

8.5 The Board requested that specific and deliverable milestones for the governance review be produced.

8.6 The Chairwoman advised that once the external expert has been appointed, a Commissioner must be appointed to work with them. It was agreed this should be the Scotland Commissioner due to her knowledge of the investigation. Alasdair Henderson had also noted via correspondence to the Chairwoman that he would like to be involved in this process. This was agreed.

**Action: Acting Chief Executive to work with the Interim Deputy Chair to agree milestones for the governance review.**

8.7 Commissioners asked for the vision of the reset and renewal programme to be reworded to say *"To re-establish our ways of working and shared endeavour, providing a strong platform to the Commission in delivering their important work to champion and protect Equality and Human Rights across Great Britain."*

## 9. SCA Decision re Special Review

9.1 The Head of Strategy introduced the paper, noting that it sets out the SCA process for Special Review including the timeline and potential outcomes. He advised that we must provide an initial response to the issues raised by 20 December 2023.

9.2 Commissioners agreed that we must provide a robust response. It was also agreed that whilst the formal response will be the primary action, we must also adopt a broader strategy to engage with stakeholders and staff around this issue.

9.3 The Board agreed that the formal response will be signed off by the Chairwoman and the Chair of the HRM CWG, unless time permits to circulate it to the whole Board.

## 10. Department for Work and Pensions (DWP) Investigation

10.1 The Board was updated on the current state of discussions with the DWP. The Board agreed in principle to further proposed action by EHRC, but agreed that first the Chairwoman should take up the recent offer of a meeting with the Secretary of State for Work and Pensions.

**Action: Private Office to organise a meeting between the Chairwoman, Akua Reindorf, Alasdair Henderson and the Secretary of State for Work and Pensions.**

10.2 [Redacted due to confidentiality].

10.3 To a question, the Principal for Enforcement confirmed this work related to two benefits payable in England and Wales and one that is reserved to UK Government so also payable in Scotland.

## 11. Tackling discrimination, harassment and victimisation within uniformed services

11.1 The Board agreed that further work should be undertaken to develop and scope activities in this area. A further paper, detailing the specific milestones of this programme of work, was requested in due course.

**Action: Tackling discrimination, harassment and victimisation within uniformed services to return to the Board once a more detailed programme of work has been developed.**

11.2 Commissioners queried the staffing and financial commitment required for this programme of work. The Director of Regulation advised that much of the work would be internally resourced, and he would not foresee a large external budget.

11.3 To a question on measuring success, the Senior Principal for Compliance advised that there is little precedent for measuring improvement in this area. The approach would be to establish with the services what changes we should expect to see and agree plans to measure against these.

11.4 Commissioners advised that they would also like to see racism in the uniformed services considered alongside sexual and other forms or harassment.

## 12. Corporate Risk

12.1 The Board noted the risk position at the mid-point of the year.

12.2 The ARAC Chair advised that ARAC had recommended that a risk relating to the recent investigations be added to the corporate risk register.

12.3 On discussion, it was agreed that the preferred approach is to amend other existing risks in the corporate risk register to reflect these issues more clearly.

12.4 The Acting Chief Executive advised that a revised version of the risk register will be brought to the next ARAC meeting, before returning to the Board.

**Action: Revised risk register to return to the Board following discussion at ARAC.**

## 13. AOB

13.1 The Chairwoman advised that the next Board meeting will be held in person on 24 January in London.

13.2 The Board noted the Forward Schedule.

13.3 With no other business, the Chairwoman closed the meeting.